SAN SEONG CHOY & ORS. v. YUSON BIEN

[O. C. J. (Ismail Khan J.) October 20, 1962]

[Seremban — Civil Suit No. 42 of 1959]

Evidence — Road collision — Vehicles travelling in opposite directions — Conflicting evidence — Guide by which evidence can be tested.

Damages — Personal injuries — Fracture of right femur, and humerus, left wrist, and radius and ulna of left forearm — Permanent disablement — Assessment of special and general damages.

Where the drivers and witnesses on each side tell conflicting stories, the photographs, plans and measurements of the scene, and the nature of the damage to each vehicle must provide the most reliable guide by which such evidence can be tested.

In this case both the plaintiffs and defendant suffered various degrees of injuries as a result of a collision between two cars travelling in opposite directions by reason of one or the other or both of them being driven over the centre line of the road. The defendant denied the allegations of the negligence made by the plaintiffs against him and he counterclaimed against the first and third plaintiffs for the latter's negligence on the very same grounds.

Held: the negligence of the third plaintiff was the sole and effective cause of the accident.

The defendant, a 52-year old estate manager earning $1,450 p.m. and yearly bonus, sustained serious injuries, (i.e., fracture of the right femur, the right humerus, the left wrist and the radius and ulna of the left forearm). These injuries caused permanent disablement and he had become no longer physically able to carry out the strenuous duties of an estate manager and was consequently relegated to sedentary office work. He was in fact re-employed as office manager at $500 p.m.

Held: (in dismissing the claim and allowing the counterclaim) judgment for defendant counterclaim with special damages of $19,572.17, and general damages $80,000.

CIVIL SUIT.

R. H. V. Rintoul for the plaintiffs.

L. A. J. Smith (*F. Keith Sellar* with him) for the defendant.

Cur. Adv. Vult.

Ismail Khan J.: In this case the question for determination is whether two motor vehicles travelling in opposite directions met in collision by reason of one or the other or both of them being driven over the centre line of the road.

The accident occurred some time after 2 p.m. on 23rd August, 1958, near the 9th mile south of Seremban, on the Seremban/Tampin Road. A Simca car, T.4148, (hereinafter called the T. car) driven by the third plaintiff was on its way from Singapore to Kuala Lumpur. It carried four people, three of whom were the first, second and third plaintiffs, the fourth being a sister of the second plaintiff. The first plaintiff was the owner of the car and the three plaintiffs and the sister of the second plaintiff suffered various degrees of injury. The car was a total wreck and the plaintiffs claim damages from the defendant who was the owner and driver of the other vehicle, also a Simca car, M. 6716 (hereinafter called the M. car). The defendant denied the allegation of negligence made by the plaintiffs against him of having driven over the centre line of the road and he counterclaimed against the first and third plaintiffs for damages for the latter's negligence on the very same ground.

The plaintiffs' story may be told in a few words. At the 9½ mile Seremban/Tampin Road their car was negotiating a left-hand bend and proceeding up a slight incline at a speed said to be 30 to 35 miles an hour. There was a yellow line along the centre of the road and the car was keeping to the left of the line. The M. car then appeared from the opposite direction, crossing over the yellow line on to the plaintiffs' side to the extent that, according to the third plaintiff, three-quarters of the M. car was over the line. The third plaintiff immediately applied his brakes but could not avoid the collision.

The defendant's evidence is that he left Seremban to go to his estate. Near the 9th mile he had to negotiate at low speed a sharp S-bend over a railway line. About 400 feet beyond the bridge, and as he was approaching a bend, he saw the T. car coming towards him at a very great speed along the centre of the road. He braked and had come to a stop near the grass verge on his own side when the collision occurred.

Where, as in this case, the drivers and witnesses on each side tell conflicting stories, the photographs, plan and measurements of the scene, and the nature of the damage to each vehicle must provide the most reliable guide by which such evidence can be tested. To confirm that the plan was correct, there is here the independent testimony of Inspector Ghazali who was the first police officer to appear on the scene shortly after the event. He was then on his way from Seremban to Tampin. He found the M. car on its correct side of the road close to the grass verge and the T. car standing almost across the road. A guide-stone had been knocked down by the side of the M. car. There were clear brake marks leading up to the T. car as shown in the enlarged photograph P1, page 10. According to him the photograph P2E represented the position of the two cars as he saw them. He then left and reported the accident and shortly afterwards the investigating officers arrived. They were Inspector Zainal, O.C.P.D., Tampin, and Inspector Selamat, assisted by Corporal Jantan. These three officers confirmed having found the cars in the same position where Inspector Ghazali saw them. After completion of their investigations they removed the T. car to the side of the road, in the position shown in P2F. It was only upon such removal that the right front wheelmark of the T. car was seen to have crossed the centre line for about 6 or 8 inches. Their evidence has satisfied me that the plan and measurements made and taken by Corporal Jantan may be taken as correct, and that there had been no interference with the T. car or any other object on the scene between the occurrence of the collision and the official investigation.

Coming now to the question in issue, my opinion is that the enlarged photograph P1, page 10, and the smaller one P2C, show clearly enough what led to the collision. The brake-marks indicate that the T. car started to take the bend close to the near-side edge of the road. Despite forcible application of the brakes at that stage, the car still swung away from the edge towards the opposite side. The braking therefore was ineffective for bringing the steered course under immediate control, because throughout the 60 feet of braking the car was continuing to go further away from its own side of the road. The obvious reason must be that the driver was taking the bend at an excessive speed and the curve was sharper than he had anticipated. The mark of the off-side front wheel showed that the bottom of the tyre which was in contact with the road surface had passed to 6 or 8 inches over the centre line. According to Mr. Pope, the bumper-bar overrider should then be 22½ inches further forward. The track mark seen in P2C further shows that the point of maximum encroachment had not yet been reached, and the damage to the vehicles confirms that the T. car was not yet beginning to return to its own side when the collision took place. Accordingly the conclusion is inevitable that the encroachment by the T. car on its wrong side of the road was the sole cause of the accident. The tyre marks of the M. car whether made before the impact or after, which I consider more probable, equally prove that it was driven on its own side. These marks together with the overturned guide-stone which damaged the M. car's near-side front door afford ample corroboration that this car was sent rolling back by the force of the collision as alleged by the defendant. Hence, I find as a fact that upon the defendant becoming aware of the dangerous situation he immediately pulled up on his side of the road and he should consequently be absolved from any share of responsibility for the accident. For the reasons I have stated above, I find that the negligence of the third plaintiff was the sole and effective cause of the accident. The claim is therefore dismissed and the defendant is entitled to judgment on his counterclaim.

The question next arising is that of damages. I shall first of all consider the question of special damages. Mr. Rintoul, for the plaintiffs, has not disputed the first seven items set out in paragraph 4 of the counterclaim amounting to $3,080.75. I accept the defendant's evidence on item 8. In my view it is quite reasonable for him to have engaged a driver for the period that he did considering the seriousness of his injuries and disablement. I allow him $1,170 as claimed under this head.

Under item 9 he further claims $7,285.71 for loss of earnings from 1st November, 1958, to 18th February, 1959, being 3-18/28 months at $2,000 a month and $8,035.71 for the period from 19th February, 1959, to 31st August, 1959, being 5-10/28 months at $1,500 a month. It was proved by Mr. Chan Kim Kum, secretary to the company owning the estate in which the defendant was employed as manager, that before the accident the defendant drew a basic salary of $1,000, cost of living allowance $250 and travelling allowance $200 and that yearly he had been paid a handsome bonus of $10,000. Three months after the accident the company paid him his salary, cost of living allowance and travelling expenses. Thereafter, that is to say, from 1st November, 1958, all salary and other emoluments ceased for four months and then he was re-employed as office manager at $500 a month. In 1959, when already disabled, he was paid a bonus of $6,000.

From the evidence above-stated, he received full payment of salary and other emoluments for the months of August, September and October, 1958. Hence he should be entitled to claim for loss of same during the four months following (actually three months and eighteen days) as follows: $1,450 monthly plus what should have fallen to him by way of bonus. He said he was actually paid $10,000 for each of the five years up to 1957 and he was actually paid $6,000 for 1958 and $6,000 for 1959. While it is true that the bonus payment was *ex gratia*, I think all the surrounding circumstances should be taken into consideration, and I agree that an assessment of $550 should be fair and reasonable making in round figures a monthly income of $2,000. Accordingly I award the total of $15,321.42 comprised in item 9. In the result the total of $19,572.17 claimed under paragraph 4 is awarded without any deductions.

Coming to the more perplexing problem of general damages, the defendant had sustained serious injuries, that is to say, fracture of the right femur, the right humerus, the left wrist and the radius and ulna of the left forearm.

These injuries caused permanent disablement. The evidence shows that the defendant had become no longer physically able to carry out the strenuous duties of estate manager and was consequently relegated to sedentary office work.

I have therefore to do the best I can to compensate him in money for loss of earning capacity and of the amenities that go with the enjoyment of complete physical health and fitness during the period of his remaining life expectancy.

There enter into the calculations matters that are not readily convertible into terms of dollars and cents. Again there are accidents in life and such ills to which flesh is heir which might reduce the life expectancy of the fittest of men. After anxious consideration of what a man of 52 could be expected to do for himself during the remaining years of his life, and taking into account relevant factors such as incidence of taxation, rate of possible saving had the defendant been able to continue working normally, the accelerated getting in of a substantial sum in cash, I have come to the conclusion that in all the circumstances $80,000 would be a fair and reasonable compensation under the head of general damages.

There will therefore be judgment for the defendant for the sum of $99,572.17 and costs to be taxed.

Judgment for the defendant.

Solicitors: *Shearn, Delamore & Co.; Sault, Keith Sellar & Co.*

LIOW SANG v. CHAI CHOO KIM & ANOR.

[O. C. J. (Gill J.) October 23, 1962]

[K.L. — Civil Suit No. 654 of 1961]

Damages — Personal injuries — Multiple fractures — Leg amputated through the knee — Rupture of urethra — Impotence — Assessment of damages.

The plaintiff, a 35-year old lorry driver whose average daily earning was $8, whilst riding a bicycle early one morning was run into from behind by a lorry driven by the first defendant and which was travelling in the same direction as the plaintiff. It was alleged that this lorry had just been in a collision with a lorry driven by the second defendant, also travelling in the same direction. The plaintiff claimed damages for personal injuries sustained by him as a result of the accident from one or the other or both of the defendants as he alleged that he was run into and knocked down as a result of the negligence on the part of the first or second defendant or both of them. The first defendant admitted that it was his lorry which knocked down the plaintiff, but denied that it was caused by his negligence. He maintained that the accident was caused by the negligence of the second defendant. The second defendant denied negligence on his part.

Held: (1) the first defendant was in no way negligent and that the injuries to the plaintiff was caused as a direct and immediate result of the second defendant's negligence;

(2) in all the circumstances of this case and taking into consideration the injuries sustained by the plaintiff which caused his detention in hospital for approximately six months the sum of $3,420 awarded as special damages and $37,000 as general damages.

Cases referred to:

(1) *Pahang Lin Siong Motor Co. Ltd.* v. *Cheong Swee Khai* [1962] M.L.J. 29.

(2) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1962] M.L.J. 78.

(3) *Atkinson* v. *Ministry of Supply* (1952), 1 Kemp & Kemp, 2nd Ed. 430.

CIVIL SUIT.

Denis Murphy (*G. T. S. Sidhu* with him) for the plaintiff.

Tan Tee Seng for the first defendant.

Khoo Eng Chin for the second defendant.

Cur. Adv. Vult.

Gill J.: The plaintiff in this case was riding a bicycle along Ampang Road in the direction of Kuala Lumpur on 11th March, 1961, at about 7 a.m. when at or about the 3¾ milestone he was run into and knocked down by motor lorry No. BD. 2023 which was driven by the first defendant and which was travelling in the same direction. It is alleged that this motor lorry had just been in collision with motor lorry No. BF. 6342 which was driven by the second defendant and which was also travelling in the same direction as the plaintiff. He claims damages for personal injuries sustained by him as a result of the accident from one or the other or both of the defendants as he alleges that he was run into and knocked down as a result of negligence on the part of the first defendant or the second defendant or both of them.

The first defendant admits that there was an accident but denies that it was caused by his negligence. He maintains that the accident was caused by the negligence of the second defendant. The second defendant, on the other hand, denies negligence on his part and alleges that the collision was caused solely by the negligence of the first defendant.

The plaintiff's case as to how the accident happened consists of his evidence, the evidence of Police Sergeant, Abdul Kassim bin Said (P.W. 2) and the evidence of Police Corporal, Abdul Wahid bin Akhbar (P.W.7) who himself was riding a bicycle along Ampang Road behind the plaintiff and was knocked down by the lorry driven by the first defendant. The evidence of the plaintiff is very brief and amounts merely to this, that as he was approaching the 3¾ milestone he heard a smashing sound and became unconscious. He woke up later in hospital when he saw that he was without a foot. He summed up his evidence in his answer to a question put to him under cross-examination when he said that as far as he was concerned he did not know how the accident happened. All he can remember is that he heard a bang and became unconscious.

The evidence of Abdul Wahid (P.W.7) is that on 11th March, 1961, he was cycling from the police barracks at the 4th mile, Ampang Road, towards Kuala Lumpur when he heard a sound behind him. On turning round and looking behind, he saw two lorries, the one behind trying to overtake the one in front and the one in front refusing to give way. He then